

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation Into
Implementation of Assembly Bill 970 Regarding
the Identification of Electric Transmission and
Distribution Constraints, Actions to Resolve
Those Constraints, and Related Matters Affecting
the Reliability of Electric Supply.

Investigation 00-11-001
(Filed November 2, 2000)

**ADMINISTRATIVE LAW JUDGE'S RULING
ADDRESSING ELIGIBILITY FOR COMPENSATION AWARD**

Pursuant to Public Utilities (Pub. Util.) Code §§ 1801-1812, the Union of Concerned Scientists (UCS) filed a Notice of Intent (NOI) to claim compensation for its participation in this proceeding. This ruling finds that UCS is eligible to file its claim for compensation.

Timeliness

Pub. Util. Code § 1804(a)(1) says in relevant part that “A customer who intends to seek an award...shall, within 30 days after the prehearing conference is held, file and serve...a notice of intent to claim compensation.”

A further prehearing conference in this proceeding was held on January 14, 2003 in order to delineate the scope and schedule of additional phases in this proceeding, including the development of a renewables transmission plan per Senate Bill (SB) 1038. This was the first prehearing conference addressing the transmission of renewable energy and the relationship between this Investigation and implementation of the Renewables Portfolio Standard being conducted in Rulemaking (R.) 01-10-024.

On February 13, 2003, UCS filed an NOI indicating its intent to participate in the phases of the proceeding that will address renewable energy transmission issues.¹ UCS has timely filed its NOI with respect to these issues.

Qualification as Customers

Administrative Law Judge rulings issued pursuant to Pub. Util. Code § 1804(b)(1) or § 1804(b)(2) must rule both on whether the intervenor qualifies as a customer and in which of the three statutory categories the customer falls into. (Decision (D.) 98-04-059, mimeo., p. 31.) Section 1802(b) provides in relevant part that:

“Customer means any participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represents the interests of residential ratepayers...”

D.86-05-007 dated May 7, 1986 interpreted this statutory definition and clarified the three customer categories set forth in the statute. As summarized by the Commission in D.98-04-059, Category 1 is an actual customer who represents more than his or her own narrow self-interest; a self-appointed representative of at least some other consumers, customers or subscribers of the utility. A

¹ In response to the February 13, 2003 NOI, Pacific Gas & Electric Company (PG&E) notes that there have been a number of prehearing conferences in this proceeding, dating back to 2001. We therefore agree with PG&E that UCS’s NOI is timely filed only with respect to renewable transmission issues. We also concur with PG&E’s observation that the NOI did not adequately identify UCS’s planned participation in these issues; however, the NOI Addendum and Errata, filed by UCS on March 7, 2003, does provide such information.

Category 2 customer is one who has been authorized by actual customers to represent them. A Category 3 customer is a formally organized group authorized by its articles of incorporation or bylaws to represent the interests of residential customers.

A party seeking eligibility to claim compensation is required to state how it meets the definition of a customer and, for Category 3 customers, point out where in the organization's articles or bylaws it is authorized to represent the interests of residential ratepayers. If current articles or bylaws have already been filed, the group or organization need only make a specific reference to such filing. Groups should indicate in the NOI the percentage of their membership that are residential ratepayers. Similarly, a Category 2 customer is required to identify the residential customer or customers that authorized him or her to represent that customer. (D.98-04-059, mimeo., pp. 29-30, 83, 88.)

UCS is a national, non-profit environmental organization with an office in Berkeley, California and nearly 15,000 individual members and activists in California. UCS is specifically authorized under its bylaws to represent the interests of its members "before administrative agencies and the courts."² All of UCS's members in California are residential customers of PG&E, San Diego Gas & Electric Company or Southern California Edison Company.³ Accordingly, UCS qualifies as a Category 3 customer.

² NOI, p. 2.

³ *Ibid.*, footnote 2.

Planned Participation

Pub. Util. Code § 1804(a)(2)(A)(I) requires that the NOI include a statement of the nature and extent of the customer's planned participation. The Commission has stated that the information provided on planned participation should provide the basis for a more critical preliminary assessment of whether (1) an intervenor will represent customer interests that would otherwise be underrepresented, (2) the participation of third-party customers is non-duplicative, and (3) that participation is necessary for a fair determination of the proceeding. The Administrative Law Judge may issue a preliminary ruling on these issues, based on the information contained in the NOI and in the Assigned Commissioner's scoping memo. (D.98-04-059, pp. 27-28, 31-33.)

UCS states that it is the only non-profit, environmental intervenor focused in this proceeding on the importance of expanding renewable energy for public health, energy security and reliability, and energy diversity. UCS plans to work with other intervenors to avoid duplication in effort and argument. UCS will focus its participation in this Investigation on transmission issues related to the California Energy Commission's renewable transmission assessment and this Commission's development of a renewables transmission plan, to the extent that these issues are not addressed in R.01-10-024. UCS intends to submit testimony and briefs, and participate in any workshops or hearings on renewable transmission issues such as: timing and cost of transmission upgrades needed for renewable energy, allocation of transmission costs, effect of transmission issues on renewable energy bid evaluation and ranking and other issues related to the Commission's implementation of the Resource Portfolio Standard.

To the extent that these same interests are shared by other parties, or are represented by other parties which do not seek intervenor compensation (e.g.,

the Office of Ratepayer Advocates), UCS runs the risk that their efforts may merely duplicate those of others. To the extent that such duplication is found, UCS is at risk of receiving reduced or no compensation for such efforts. The NOI does not provide us with sufficient information to make such a determination at this time. The Commission will consider the issue of duplication of effort when it reviews the subsequent request for compensation.

The Commission has also explained that participation by intervenors is not necessary for a fair determination of the proceeding if the customer argues issues that are irrelevant, beyond the scope of the proceeding or beyond the Commission's jurisdiction. (*Ibid.*, pp. 31-32.) Here, I preliminarily find that the planned participation of UCS, as described in their joint NOI, is necessary for a fair determination of the proceeding. The issues that UCS intends to address have been identified in the rulings dated January 29, 2003 and February 26, 2003.

Estimated Compensation Request

UCS presents the following joint budget estimates:

Fees of Staff Attorney (32 hours at \$250/hour)	\$ 8,000
Fees of Alan Noguee, Clean Energy Program Director (12 hours at \$200/hour)	\$ 2,400
Fees of Senior Energy Analyst (76 hours at \$180/hour)	\$13,680
Outside Expert For Preparation of Testimony/Witnesses	\$13,680
TOTAL	<u>\$37,760</u>

The NOI fulfills the requirements of Pub. Util. Code § 1804(a)(2)(A)(ii) by including an itemized estimate of the compensation expected to be requested. Although this ruling does not address the merits of the final compensation claim

by UCS, I reiterate and clarify my cautionary observations in a ruling dated October 12, 1999 in Application (A.) 99-07-002 et al. that intervenors should carefully review Commission orders and be mindful of the areas where the Commission reduced either the hourly rates or number of hours claimed.

Significant Hardship

Pub. Util. Code § 1803 authorizes the Commission to award reasonable advocate's and expert witness fees and related costs only to customers who make a substantial contribution to the Commission's decision and for whom participation or intervention in a proceeding without an award of fees imposes a significant financial hardship. The Commission has clarified that the financial hardship test varies by type of customer. (See D.98-04-059, mimeo., pp. 33-37, 89.)

In summary, Category 1 and, in part, Category 2 customers must show by providing their own financial information (which may be filed under seal) that they cannot afford, without undue hardship, to pay the cost of participation. Category 3 customers must show that the economic interest of individual members is small in comparison to the cost of participation. For Category 2 customers where representation is authorized to represent a group of customers, the comparison test will not be routinely applied. The question of which test to apply will be determined from the form of customer asserted and customer's specific financial hardship showing.

Pub. Util. Code § 1804 (a)(2)(B) allows the customer to include with the NOI a showing that participation in the hearing or proceeding would pose a significant financial hardship. Alternatively, such a showing shall be included with the request for compensation submitted pursuant to § 1804(c). If a customer has received a finding of significant financial hardship in any proceeding,

§ 1804(b)(1) creates a rebuttable presumption that the customer is eligible for compensation in other proceedings which commence within one year of the date of the finding. The Commission found that UCS satisfies the requirement for significant financial hardship in the August 20, 2002 Ruling on UCS's NOI in R.01-10-024. Therefore, I find that UCS has met the required showing of "significant financial hardship" for the purposes of its NOI in this proceeding.

Today's ruling goes only to the eligibility of UCS to claim compensation. It does not address the final merits of the claims, which the Commission will address after parties have documented expenses in greater detail and demonstrated substantial contribution to the proceeding, as provided in Pub. Util. Code Article 5.

IT IS RULED that:

1. Union of Concerned Scientists (UCS) timely filed a joint Notice of Intent for compensation in this proceeding.
2. UCS is a Category 3 customer.
3. UCS has fulfilled the requirements of Pub. Util. Code § 1804(a)(2)(A).
4. UCS has demonstrated "significant financial hardship."
5. UCS is eligible for an award of compensation for a substantial contribution in this proceeding.

Dated March 19, 2003, at San Francisco, California.

/s/ MEG GOTTSTEIN

Meg Gottstein
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Addressing Eligibility for Compensation Award on all parties of record in this proceeding or their attorneys of record.

Dated March 19, 2003, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.